TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 554.

MARSHALL B. BLAKE, COLLECTOR OF INTERNAL REVENUE,
PLAINTIFF IN ERROR,

vs.

THE FOURTH NATIONAL BANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 6, 1874.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the Fourth National Bank, plaintiff, and Marshall B. Blake, defendant, a manifest error hath happened, to the great damage of the said Marshall B. Blake, defendant, as is said, and as appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October, 1874, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 23rd day of September, in the year of our Lord one thousand eight hundred and seventy four, and of the Independence of the United States the ninety-ninth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

2 (Indorsed:) U. S. Supreme Court. Marshall B. Blake, plff. in error, vs. Fourth National Bank, deft. in error. Writ of error. George Bliss, atty. for plff. in error.

Within writ is hereby allowed.
Sept. 23d, 1874.

SAML. J. BLATCHFORD, *D. J.*

Filed Sept. 25, 1874.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

3 I, Kenneth G. White, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from one to thirty-five inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Marshall B. Blake, plaintiff in error, against the Fourth National Bank, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 26th day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the said United States the ninety-ninth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

4 Circuit court of the United States for the southern district of New York.

THE FOURTH NATIONAL BANK OF THE CITY of New York, plaintiffs,
against
MARSHAL' B. BLAKE, DEFENDANT.

Pleas before the judge of the circuit court of the United States of America, for the southern district of New York, in the second circuit, at the United States court building, No. 41 Chambers street, in the city of New York, of the term of October, 1873, to wit, of the 7th day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Witness the honorable Lewis B. Woodruff, judge of the said court.

KENNETH G. WHITE, *Clerk*.

5 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 25th day of September, 1872, in April term of the circuit court of the United States of America, for the southern district of New York, in the second circuit held at the United States court building No. 41 Chambers street, in the city of New York, in the said district, before the judge of the said court, came the Fourth National Bank of the city of New York, by Francis C. Barlow, its attorney, and brought then and there into the said court, before the judge thereof, its certain declaration against Marshal' B. Blake, (being in custody, &c.,) of a plea of trespass on the case upon promises, which said declaration follows in these words, that is to say.

6 Circuit court of the United States for the southern district of New York, in the second circuit.

THE FOURTH NATIONAL BANK OF THE CITY of New York, plaintiffs,
vs.
MARSHAL' B. BLAKE, DEFENDANT.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by Francis C. Barlow, their attorney, come here into court, and suggest and give the court now here to understand and be informed that heretofore, to wit, on the second day of August, A. D. 1872, a suit was duly commenced in the supreme court of the State of New York, in the county of New York, by the plaintiffs above named, against the defendant herein, by summons, upon and for the same cause of action hereinafter set forth.

That the said defendant afterwards duly appeared in said suit by Noah Davis, esq., his attorney, and such proceedings were had thereupon that afterwards, to wit, on the sixth day of August, 1872, said suit was
7 duly removed by writ of certiorari to this court, agreeably to the provisions of the statute in such case made and provided.

That upon the removal of such suit it is made to appear to this court that no copy of the record and proceedings therein in said supreme court can be obtained; which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the plaintiffs proceed de novo and file a declaration of their cause of action, and let the parties thereupon proceed as in an action originally brought in this court.

And the plaintiffs now according to law, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case upon promises:

For that whereas the said plaintiffs, at all the times hereinafter mentioned, to wit, from the first day of July, 1870, up to the present time were and still are a body-corporate, or bank incorporated and
8 existing for the purpose of carrying on the business of banking under and by virtue of a law of the Congress of the United States passed June 3d, 1864, and entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof;"

And, as such association or corporation, were, and are, located in the city, county, and State of New York, in the thirty-second collection district of said State, and therein carried on said business of banking, and had power and capacity to sue by the name of the Fourth National Bank of the City of New York:

And whereas, on the fifteenth day of December, 1870, the said plaintiffs declared a dividend of $205,128.21 from their earnings, income, and gains, which dividend was by the terms of its declaration made payable to stockholders on the 30th day of December, 1870, and accrued and was declared and paid out of the earnings, income, and gains of the plaintiffs for the six months beginning on the first day of July, 1870, and of which the sum of $170,940.15, part thereof, was declared and paid out of the earnings, income, and gains of the plaintiffs for
9 the months of August, September, October, November, and December, 1870.

And whereas said dividend was forthwith, and on and after the said 30th day of December, 1870, paid by the plaintiffs to the several stockholders thereof entitled to the same, and neither the tax of two and one-half per centum hereinafter mentioned, nor any other tax or sum whatsoever was deducted or withheld by said plaintiffs from said dividend or the payment thereof;

And whereas also, on the 30th day of December, 1870, the said plaintiffs added to their surplus the sum of $93,894.68 of its undivided profits which accrued and were earned in and during the six months beginning on the first day of July, 1870, and of which $78,245.55, part thereof, accrued and was earned in and during the months of August, September, October, November, and December, 1870.

And whereas, on the 21st day of November, 1870, the plaintiffs did pay to the proper officer, to wit, the receiver of taxes of the city of New York, the sum of $92,128, as and for the city, county, and State tax of the
10 city, county, and State of New York, imposed by law upon the shares of the stock of the plaintiffs' bank held by the stockholders thereof, and which payment was made for the account and behalf of the stockholders of the plaintiffs, and would have been, if it had not been paid as taxes as aforesaid, divided as a dividend to said stockholders in addition to the dividend above mentioned; and which sum of $92,128 was so paid by the plaintiffs out of the gains, income, and profits of the plaintiffs which were earned and accrued during the six months from the first day of July, 1870, to the first day of January, 1871, and of which $76,770, part thereof, was earned and accrued during the months of August, September, October, November, & December, 1870.

And whereas, also, the assessor of internal revenue of the United

States in and for the said thirty-second collection-district of the State of New York, did afterwards, to wit, on the fifteenth day of June, 1871, under a false and illegal claim that a tax of two and one-half per
11 cent. was by law due to the Government of the United States upon the amount of said dividend, and upon the said amount so as aforesaid added to surplus, and upon said amount so as aforesaid paid as city, county, and State taxes, assess an erroneous and illegal tax against the plaintiffs of two and one-half per cent. upon the said several sums of $205,128.21, $93,894.68, and $92,128, above described, to wit, upon said dividend declared on December 15th, 1870, the sum of $5,128.21, (of which $4,273.50 was the tax so assessed upon the aforesaid $170,940.15, which was the portion of said dividend which accrued and was earned in the months of August, September, October, November, and December, 1870,) and upon said amount added to surplus on the 30th day of December, 1870, the sum of $2,347.36, (of which $1,956.40 was the tax so assessed upon the aforesaid sum of $78,245.55, which was the portion of said addition to surplus which was earned and accrued in and during the months of August, September, October, November, and December, 1870,) and upon said amount
12 paid as city, county, & State taxes, the sum of $2,303.20, (of which $1,919.25 was the tax so assessed upon the aforesaid $76,770, which was the portion of said amount so paid for city, county, and State taxes which accrued and was earned in the months of August, September, October, November, & December, 1870;) the aggregate of all which amounts so erroneously and illegally assessed as aforesaid was the sum of $9,778.77 of which the sum of $8,149.15, part thereof, was the tax assessed as aforesaid upon that part of said dividend, addition to surplus and amount paid as city, county, & State taxes as aforesaid, which accrued & was gained in the last five months of the year, all of which said taxes were illegally & erroneously assessed as aforesaid, when, in truth and fact, the said plaintiffs were exempt from any taxation upon said dividend, amount added to surplus, and amount paid for city, county, & State taxes, or any part thereof, (for the reason that neither the act of Congress of June 30th, 1864, and the several amendments thereto, nor the act of Congress of July 14th, 1870, nor any other
13 provisions of law in that behalf, imposed, or were intended to impose, any tax upon the said dividend, addition to surplus, or amount paid as aforesaid, for city, county, & State taxes or any parts thereof.

And for the further reason that said acts are not authorized by the Constitution of the United States; and the said plaintiffs then and there protested against said assessments, and against the payment of any such illegal and erroneous taxes, or any part thereof.

And whereas, also, during all the time aforesaid, and at the time of the payment hereinafter mentioned, the defendant held the office and performed the duties of collector of internal revenues, in and for the said thirty-second collection-district of the State of New York, and on or about the thirtieth day of June, 1871, as such collector, illegally demanded of the plaintiffs the payment of the said taxes so illegally and erroneously assessed as aforesaid, and they, the said plaintiffs, were compelled to, and did, on the 30th day of June, 1871, pay to the defendant, as such collector, under protest and duress, and by com-
14 pulsion, the said erroneous and illegal taxes, amounting in the aggregate to the sum of $9,778.77, which sum the said defendant, as such collector, as aforesaid, received and collected in the manner aforesaid.

And whereas, also, on or about the 30th day of December, 1871, said plaintiffs, according to the provisions of law in that behalf, and the regulations made by the Secretary of the Treasury in pursuance thereof, made an appeal to the Commissioner of Internal Revenue from the said erroneous and illegal assessments upon, and collections from, the said plaintiffs of the aforesaid erroneous taxes; by which said appeal the said plaintiffs did claim and demand that the said Commissioner of Internal Revenue should remit and refund to the said plaintiffs the said sums of money so paid by the said plaintiffs to the said defendant, as aforesaid, as and for said erroneous and illegal taxes aforesaid.

And whereas a decision on said appeal has been delayed more than six months from the date of said appeal, (and had been so delayed
15 at the time of the commencement of this action,) and this action is now brought by these plaintiffs after the expiration of six months from the date of said appeal, and within one year from the date of said appeal.

By means of which several premises the said defendant then and there became liable to pay back to the said plaintiffs the said sums of money, together with the lawful interest thereon from the time of the payment thereof to the said defendant, as above mentioned; and, being so liable, the defendant, in consideration thereof, heretofore, to wit, on the 30th day of June, 1871, at New York, in said district, undertook, and then there faithfully promised the said plaintiffs to pay them the said sum of $9,778.77 and said interest, when he, the said defendant, should be afterwards thereunto requested; yet the said defendant, although often thereunto requested, the same has not paid, but to pay the same, or any part thereof to the said plaintiffs, the said defendant has hitherto
16 altogether refused, and doth still refuse, to the damage of the said plaintiffs in the sum of twelve thousand dollars.

And whereas, also, the said defendant afterwards, to wit, on the 30th day of June, 1871, and at the place last aforesaid, being then and there collector of internal revenue for the thirty-second collection-district of New York, was indebted to the said plaintiffs in the sum of $9,778.77, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant at the special instance and request of him the said defendant;

And for other moneys by said plaintiffs before that time paid, laid out, and expended for the said defendant at the special instance and request of him, the said defendant;

And for other moneys by the said defendant before that time had and received to the use of the said plaintiffs.

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the 30th day of June, 1871, and at the
17 place last aforesaid, undertook and faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money, when the said defendant should be afterwards thereunto requested.

And whereas, also, the said defendant afterwards, to wit, on the 30th day of June, 1871, and at the place last aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs and then and there being in arrear and unpaid; and upon such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiffs in the further sum of $9,778.77; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the 30th day of June, 1871, and at the place last

aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said
18 sum of money last mentioned, when the said defendant should be thereunto requested.

Nevertheless, the said defendant, though often thereunto requested, has not paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiffs, but to pay the said sums or any part thereof has hitherto wholly refused, and doth still refuse, to the damage of the said plaintiffs in the sum of twelve thousand dollars, and therefore the said plaintiffs bring this suit, &c.

19 And the said Marshal B. Blake, defendant in this suit, by Noah Davis, esq., United States district attorney, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared, against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

Therefore, the issue above joined is ordered by the said court to be tried at the term of the said court appointed to be held at the city of New York on the third Monday of October, 1872.

Afterwards, that is to say, on the day and at the place before mentioned, before the judge of the said court, came as well the above-named plaintiffs as the above-named defendants, by their respective attorneys aforesaid, but the said cause was not tried, but continued from
20 term to term to the 7th day of February, 1874, at which time and at the place before mentioned, before the judge of the said court, came as well the above-named plaintiffs as the above-named defendant, by their respective attorneys aforesaid.

And the respective parties did then and there waive a trial by jury in open court, and filed a stipulation in writing to that effect, and thereupon agreed in writing upon the facts in the above cause in the words following, to wit:

21 U. S. circuit court, southern district of New York.

THE FOURTH NATIONAL BANK OF THE CITY OF New York, plaintiffs,
vs.
MARSHALL B. BLAKE, DEFENDANT.

For the purposes of the trial of this action the following facts are agreed upon:

That the allegations of the declaration down to the words, "and whereas, on the fifteenth day of December, 1870, the said plaintiffs a dividend," are true.

That on the fifteenth day of December, 1870, the plaintiffs declared a dividend of $205,128.21 from the earnings, incomes, and gains, and that said dividend was by the terms of its declaration made payable to stockholders on the 30th day of December, 1870, and was, prior to the assessment hereinafter mentioned, paid to the several shareholders en-
22 titled to receive the same; and that neither the tax of two and one-half per cent. hereinafter mentioned, nor any other tax whatsoever, was deducted or withheld by said plaintiffs from said dividend or the payment thereof to stockholders; said earnings, incomes, and gains accrued during the period from July 1st, 1870, to December 31st, 1870, inclusive.

That on the 30th day of December, 1870, the plaintiffs added to their surplus the sum of $93,894.68 of their undivided profits; said undivided profits accrued during the period from July 1st, 1870, to December 31st, 1870, inclusive.

That on the 31st day of November, 1870, the plaintiffs paid to the receiver of taxes of the city and county of New York the sum of $92,128, as and for the city, county, and State tax of the city, county, and State of New York, all imposed by law upon the shares of the stock of the plaintiffs' bank held by the stockholders thereof, which payment was made for the account and behalf of the stockholders of the plaintiffs, and which amount, unless so paid as taxes, would have been paid
23 to stockholders as a part of said dividend declared on December 16th, 1870; said taxes were paid with money taken from undivided profits which accrued and were earned during the period from July 1st to December 31st, 1870.

That the assessor of internal revenue of the United States, in and for the 32nd collection district for the State of New York, did, on the 20th day of June, 1871, assess against the plaintiffs a tax of two and one-half per cent. on the several foregoing amounts of $205,128.21, $93,894.68, and $92,128, the aggregate of which amounts of taxes so assessed was $9,778.77.

That on said June 20th, 1871, and ever since that time, the defendant held, and now holds, the office of collector of internal revenue of the United States in and for the 32d collection district of the State of New York, and then performed and now performs the duties of said office.

That on the 30th day of June, 1871, the defendant, as such collector, demanded from the plaintiffs the payment of said taxes so as-
24 sessed as aforesaid, amounting to said sum of $9,778.77, and that on said June 30th, 1871, the plaintiffs were compelled to, and did under protest, pay said sum to the defendant as such collector, and the defendant received the same.

That on the 30th day of December, 1871, the plaintiffs, under the rules and regulations made by the Secretary of the Treasury and in pursuance thereof, made an appeal to the Commissioner of Internal Revenue from the aforesaid assessment and collection, in and by which appeal the plaintiffs demanded that the said Commissioner should refund to the plaintiffs the said sum of $9,778.77 so assessed and collected as aforesaid.

That a decision on said appeal was delayed more than six months from the date of said appeal, and had been so delayed at the time of the commencement of this action, and that this action was brought by the plaintiffs after the expiration of six months from the date of said appeal, and within one year from the date of said appeal.

Dec. 18th, 1873.

GEORGE BLISS,
U. S. Atty.

25 And the said cause being then and there argued by the said attorneys for the respective parties, and the court having taken the same under advisement, the said judge of said circuit court finds that the said defendant did undertake and promise in manner and form as the said plaintiffs hath above complained against him, and assesses the damages of the said plaintiffs by reason of the premises, over and above its costs and charges by it about its suit in this behalf expended, to the amount of $11,879$\frac{3}{100}$ *dollars*, the amount claimed in the declaration, with interest to date added. Therefore it is considered that the said

plaintiffs do recover against the said defendant its said damages, costs, and charges, by the judge aforesaid assessed, and also one hundred & fifty-nine & $\frac{31}{100}$ dollars for his costs & charges, by the court here adjudged of increase to the said plaintiffs with its assent, which said damage, costs, & charges in the whole amount to twelve thousand & thirty-eight & $\frac{34}{100}$ dollars.

And the said defendant, in mercy, &c.

Judgment signed this 22d day of September, 1874.

R. E. STILLWELL,
Dep. Clerk.

(Indorsed:) U. S. circuit court. Fourth National Bank vs. Marshall B. Blake. Judgment record. Francis C. Barlow, plff. atty. Deft. costs. Total. Filed Sept. 22d, 1874.

26 U. S. circuit court.

THE FOURTH NATIONAL BANK
vs.
MARSHALL B. BLAKE. } Bill of exceptions.

This cause came on for trial at the October term of the United States circuit court for the southern district of New York, in the second circuit, to wit, on the 7th day of February, in the year 1874, in said term, before the honorable Nathaniel Shipman, judge, a jury having been duly waived by the respective parties, pursuant to the act of Congress.

Plaintiffs' counsel read the following agreed statement of facts:

For the purpose of the trial of this action, the following facts are agreed upon:

That the allegations of the declaration, down to the words "and whereas, on the fifteenth day of December, 1870, the plaintiffs declared a dividend," are true.

That on the 15th day of December, 1870, the plaintiffs declared a dividend of $205,128.21 from their earnings, incomes, and gains, and that said dividend was by the terms of its declaration made payable to stockholders on the 30th day of December, 1870, and was, prior to the
27 assessment hereinafter mentioned, paid to the several stockholders entitled to receive the same, and that neither the tax of the two and one-half per cent. hereinafter mentioned, nor any other tax whatsoever, was deducted or withheld by said plaintiffs from said dividend or the payment thereof to stockholders. Said earnings, incomes, and gains accrued during the period from July 1st, 1870, to December 31st, 1870, inclusive.

That on the 30th day of December, 1870, the plaintiffs added to their surplus the sum of $93,894.68 of their undivided profits. Said undivided profits accrued during the period from July 1st, 1870, to December 31st, 1870, inclusive.

That on the 21st day of November, 1870, the plaintiffs paid to the receiver of taxes of the city and county of New York the sum of $92,128 as and for the city, county, and State tax of the city, county, and State of New York, all imposed by law upon the shares of the stock of the plaintiffs' bank, held by the stockholders thereof, which payment was made for the account and on behalf of the stockholders of the plaintiffs, and which amount unless so paid as taxes would have been paid to stockholders as a part of said dividend declared on December 16th, 1870. Said taxes were paid with money taken from undivided

28 profits which accrued and were earned during the period from July 1st to December 31st, 1870.

That the assessor of internal revenue of the United States, in and for the 32d collection district of the State of New York, did, on the 20th day of June, 1871, assess against the plaintiffs a tax of two and one-half per cent. on the several foregoing amounts of $205,128.21, $93,894.68, and $92,128, the aggregate of which amounts of taxes so assessed was $9,778.77.

That on said June 20th, 1871, and ever since that time, the defendant held and now holds the office of collector of internal revenue of the United States in and for the 32d collection district of the State of New York, and then performed and now performs the duties of said office.

That on the 30th day of June, 1871, the defendant, as such collector, demanded from the plaintiffs the payment of said taxes so assessed as aforesaid, amounting to said sum of $9,778.77, and that on said June 30th, 1871, the plaintiffs were compelled to, and did under protest, pay said sum to the defendant, as such collector, and the defendant received the same.

That on the 30th day of December, 1871, the plaintiffs, under
29 rules and regulations made by the Secretary of the Treasury, and in pursuance thereof, made an appeal to the Commissioner of Internal Revenue from the aforesaid assessment and collection, in and by which appeal the plaintiffs demanded that the said commissioner should refund to the plaintiffs the said sum of $9,778.77 so assessed and collected as aforesaid. That a decision on said appeal was delayed more than six months from the date of said appeal, and had been so delayed at the time of the commencement of this action, and that this action was brought by the plaintiffs after the expiration of six months from the date of said appeal, and within one year from the date of said appeal.

The foregoing comprise all the evidence adduced upon the trial.

Thereupon defendant's counsel moved the court that judgment be entered for defendant, and plaintiff's counsel moved that judgment be entered for plaintiff.

After argument and due deliberation, the court denied said motion of defendant's counsel, and defendant's counsel duly excepted. The court then directed that judgment be entered for the plaintiff, to which direction and to the conclusion of law of the court upon the fore-
30 going facts as hereinafter set forth defendant's counsel duly excepted.

The decision of the court refusing judgment for defendant and directing judgment for plaintiff, and filed by the court upon the conclusion of said trial, as follows:

Shipman, J. This action was tried before the court, a jury having been waived by written stipulation of the parties. The following statement of facts was agreed to by the parties, and is found by the court to be true. (The statement of facts here referred to is the same as that set forth above.)

This case involves the same state of facts and the same questions of law which have been considered in the case of the National Park Bank of New York vs. Marshall B. Blake.

It differs from the Park Bank case in this, that a tax was also assessed and paid upon the amount of the undivided profits of the plaintiff's bank, added to their surplus on December 30th, 1870, said undivided profits accrued during the period from July 1, 1870, to December 31, 1870, inclusive.

The questions as to taxability of surplus which was added, and dividends which were declared after August 1, 1870, depend upon the same considerations.

As I have given my views fully in the opinion already filed in
31 the Park Bank case, it is not necessary to repeat them here.

Let judgment be entered for the plaintiffs for the amount of the tax paid on dividends and surplus, as stated in the findings of fact, with interest from the date of payment.

And inasmuch as the aforesaid several matters of fact and of law do not appear by the record of said trial and judgment, therefore, on the prayer of the said defendant, by his counsel, the said judge has signed and sealed this bill of exceptions this 19th day of September, in the year 1874, as yet of the October term of said circuit court as aforesaid.

N. SHIPMAN, [L. S.]
Judge.

(Endorsed:) U. S. circuit court. The Fourth National Bank vs. Marshall B. Blake. Bill of exceptions. Filed Sept. 21, 1874.

32 U. S. circuit court.

THE FOURTH NATIONAL BANK
vs
MARSHALL B. BLAKE. } Assignment in error.

And now the said Marshall B. Blake, by George Bliss, his attorney, says that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the said record aforesaid it appears that the judgment aforesaid given, was given for the said The Fourth National Bank against the said Marshall B. Blake, whereas by the law of the land the said judgment ought to have been given for the said Marshall B. Blake against the said The Fourth National Bank. And the said Marshall B. Blake prays that the aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by reason of the said judgment.

GEORGE BLISS,
Atty. for Plff. in Error.

33 (Endorsed:) The Fourth National Bank vs. Marshall B. Blake. Assignment in error. George Bliss, deft. atty.

Due service copy within assignment of error is hereby admitted. Sept. 24, '74.

FRANCIS C. BARLOW,
Plff.'s Atty.

Filed Sept. 25, 1874.

34 U. S. Supreme Court.

MARSHALL B. BLAKE, PLAINTIFF IN ERROR,
vs.
THE FOURTH NATIONAL BANK OF THE CITY OF New York, defendants in error.

And afterwards, to wit, on the 25th day of September, 1874, in the said October term of the year A. D. 1873, the said The Fourth National Bank of the city of New York, by Charles C. Beaman, jr., their attorney, freely came here into court and say that there is no error either in the

record or proceedings aforesaid, or *in the record or proceedings aforesaid, or* in the giving of the judgment aforesaid, and they pray that the Supreme Court of the United States may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above
35 assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

CHARLES C. BEAMAN, JR.,
Atty. for Deft. in Error.

(Endorsed:) U. S. Supreme Court. Marshall B. Blake, plff. in error, vs. The Fourth National Bank of New York, defts. in error. Joinder in error. Charles C. Beaman, jr., atty. for deft. in error. Filed Sept. 26th, 1874.

36 United States of America, to the Fourth National Bank, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, 1874, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of New York, wherein Marshal B. Blake, collector of internal revenue, &c., is plaintiff in error and you are the defendants in error, to show cause, if any there be, why the judgement in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the hon'ble Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, this 23d day of September, in the year one thousand eight hundred and seventy-four.

SAM'L BLATCHFORD.

37 (Indorsed:) U. S. Supreme Court. Marshall B. Blake, plff. in error, vs. The Fourth National Bank, deft. in error. Citation. George Bliss, atty. for plff. in error.

Due service copy within citation is hereby admitted.
Sept. 24, '74.

FRANCIS C. BARLOW,
Atty. for Deft. in Error.

Filed Sept. 25, 1874.

(Indorsement on cover:) No. 554. S. New York, C. C. U. S. Marshall B. Blake, collector of internal revenue, plaintiff in error, vs. The Fourth National Bank. Filed 6th October, 1874.

In the Supreme Court of the United States.

MARSHAL B. BLAKE, COLLECTOR, &C., *vs.* THE FOURTH NATIONAL BANK. } No. 554.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Brief for the collector.

This was an action of assumpsit, brought by the bank to recover an amount of money which the collector had compelled it to pay as a tax of 2½ per cent., (1) upon a dividend ($205,128.21) declared 15th (payable 30th) December, 1870, from earnings between July 1 and December 31, 1870; (2) upon an amount ($93,894.68) added December 30, 1870, to its surplus, from profits accruing between July 1 and December 31, 1870; and (3) upon an amount ($92,128.00) paid November 21, 1870, to the receiver, &c., as taxes to the city, county, and State of New York, which sum, unless so paid, would have gone to increase the above dividend.

The court below having given judgment against the collector, this writ of error was brought.

We assign for error the ruling of the court that no